

Addendum to the Final Statement of Reasons for Rulemaking Advanced Clean Fleets Regulation

First Public Hearing Date: October 27, 2022
Second Public Hearing Date: April 27-28, 2023
Agenda Item No.: 22-14-1 and 23-4-2
Addendum Prepared: August 30, 2023

I. General

This addendum to the Final Statement of Reasons (FSOR) for the rulemaking action entitled Advanced Clean Fleets Regulation ("ACF Regulation") updates the FSOR that the California Air Resources Board (CARB) initially submitted to the Office of Administrative Law (OAL) on June 13, 2023, for its review and approval. This FSOR Addendum updates the FSOR by identifying and explaining the modifications to the regulatory text that CARB made per the 15-day changes released on August 4, 2023. It updates the information and responds to the written comments submitted to CARB regarding the proposed modifications to the regulatory text, the procedures followed by CARB in proposing or adopting those modifications, or the documents that CARB added to the ACF rulemaking record pursuant to Government Code section 11347.1.

On July 26, 2023, CARB withdrew the ACF rulemaking record from OAL. CARB made changes to the proposed regulatory text to improve clarity and issued a Second 15-Day Notice with proposed modifications and to add additional documents into the ACF rulemaking record on August 4, 2023. The proposed modifications primarily consist of revisions to the five-day pass provision and removing language that sunset provisions of the Advanced Clean Trucks (ACT) Regulation at the end of the 2035 model year, and also include minor clarifications to various reporting, recordkeeping, and compliance requirements, and non-substantial corrections to grammar and punctuation. The additional documents primarily consist of information refuting a comment that CARB misrepresented the emissions benefits of the ACF Regulation by not conducting a full life-cycle analysis of the greenhouse gas emissions attributable to that regulation. CARB resubmitted the ACF rulemaking record to OAL on August 30, 2023.

CARB received written comments from 39 stakeholders during the Second 15-Day Notice comment period from August 4 to 21, 2023. The FSOR was amended to include four additional comments that were received during prior open comment periods and this addendum was prepared to address all timely-filed comments received during the Second 15-Day Notice comment period. The Administrative Procedure Act (APA) requires that staff respond to timely comments received regarding all noticed changes. Therefore, staff is only required to address comments received during this second 15-day comment period that

are responsive to the Second 15-Day Notice, newly added documents, or the changes detailed in Appendices A-1 through A-4 of the notice. (web link: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/acf22/ac/2nd15daynotice.pdf>)

In adopting the ACF Regulations, CARB has added the following new sections to title 13, in the California Code of Regulations: 2013, 2013.1, 2013.2, 2013.3, 2013.4, 2014, 2014.1, 2014.2, 2014.3, 2015, 2015.1, 2015.2, 2015.3, 2015.4, 2015.5, 2015.6, and 2016.

II. Modifications Made with the Second 15-Day Notice

The following section briefly describes the modifications made to the ACF Regulation, released for public comment on August 4, 2023. This section does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, nor does it include all non-substantial revisions made to improve clarity. For more detailed information on each change and their purpose and rationale, see the ACF Second 15-Day Notice on CARB's website: <https://ww2.arb.ca.gov/rulemaking/2022/acf2022>.

A. Section 2015.3, High Priority and Federal Fleets Requirements

In section 2015.3(g), the five-day pass provision was modified to clarify the criteria used by CARB's Executive Officer to evaluate and approve a request for a five-day pass. Language was added to inform a fleet owner that if the online Truck Regulation Upload, Compliance, and Reporting System (TRUCRS) system is down, they can provide a copy of the email requesting a five-day pass to TRUCRS@arb.ca.gov in lieu of an approved pass to CARB enforcement personnel. Language was added to better identify the required annual reporting information that would have been entered into TRUCRS related to this provision, along with the date the first day the five-day pass will be used must be included in the email if this alternative method is used. Additional language was added to clarify that a vehicle will not be issued a pass if that vehicle has already operated in California and has already been issued a five-day pass for the same calendar year.

B. Section 2016, 2036 100 Percent Medium- and Heavy-Duty Zero-Emissions Vehicle Sales Requirements

Section 2016(a) was deleted. This section sunsetted the requirements of the ACT Regulation, located in title 13, California Code of Regulations, sections 1963, 1963.1, 1963.2, 1963.3, 1963.4, and 1963.5, at the end of the 2035 model year. Staff removed the sunset provision for the ACT Regulation because it is not necessary to include that provision in this rulemaking action and that provision can be considered in a subsequent rulemaking action.

III. Non-Substantial Modifications

No non-substantial modifications were made to the ACF Regulation following the Second 15-Day Notice.

IV. Second 15-Day Comment Period Public Summary of Comments and Agency Response

Written comments were received during the second 15-day comment period from August 4 through August 21, 2023. Written comments submitted during comment periods can be viewed at this webpage, https://www.arb.ca.gov/lispub/comm/iframe_bccommlog.php?listname=acf20222nd15day. Table 1 shows the comment period code for each of the comment periods along with a description.

Table 1: Comment Period Code and Description

Comment Period Code	Comment Period Description
15-2	Written comments submitted during the second 15-day

The comment period code is used as a primary identifier preceded by a dash and a sequential number in chronological order. The comment codes and sequential numbers are used as primary identifiers that relate comments to individuals or organizations who submitted them. Comment codes are shown below comment summaries and above agency responses. The following table can be used as a key to relate comment codes to the organizations and individuals who submitted them.

Table 2: Written Comments Received During the Second 15-Day Comment Period

Comment Code	Commenter's Name	Organization	Date Submitted
001-15-2	Nancy Chaires Espinoza	School Energy Coalition	08-08-2023
002-15-2	David Atwater	Individual	08-08-2023
003-15-2	Mary Rancier	Associated General Contractors of CA	08-16-2023
004-15-2	Ryan Clink	Hexagon Agility	08-16-2023
005-15-2	Brandon Craighead	Penny Newman	08-16-2023
006-15-2	Steve Gallant	Marathon General	08-16-2023
007-15-2	Ryne Shetterly	TCI Logistics	08-16-2023
008-15-2	Gerald Peters	Glenn County Air Pollution Control District	08-16-2023
009-15-2	Casey Cheng	Montrose Environmental	08-16-2023
010-15-2	Alyssa Mendez	Kingsburg Truck Sales	08-16-2023
011-15-2	Steve Ellsworth	Ellco Transportation	08-16-2023
012-15-2	Grant Stickney	Peterson Caterpillar	08-17-2023
013-15-2	Joe Korn	Holman	08-17-2023
014-15-2	Joaquin Vergara	Puratos	08-18-2023
015-15-2	Geovanni Perez	PWS Logistics	08-18-2023
016-15-2	Zack Skilton	Enterprise Fleet Management	08-18-2023
017-15-2	Raymond McIntyre	City of Petaluma	08-18-2023
018-15-2	Glen Catalina	EM Tharp	08-18-2023
019-15-2	Steven Brink	California Forestry Association	08-18-2023

Comment Code	Commenter's Name	Organization	Date Submitted
020-15-2	Sean Henebry	PACCAR	08-18-2023
021-15-2	Cara Simaga	Stericycle	08-21-2023
022-15-2	Larry Rennacker	Arrow Tek	08-21-2023
023-15-2	Paul Shaffer	Landi Rezzo	08-21-2023
024-15-2	Brandon Craighead	Penny Newman	08-21-2023
025-15-2	Adam North	Revolv	08-21-2023
026-15-2	Brayden Sanchez	King County Citizens for a Healthy Environment	08-21-2023
027-15-2	Brandon Buchanan	American Bus Association	08-21-2023
028-15-2	Christine Wolfe	California Council for Environmental and Economic Balance	08-21-2023
029-15-2	Nadine Vasquez	P and R Trucking	08-21-2023
030-15-2	Jay Mason	Universal Logistics Holdings	08-21-2023
031-15-2	Michael Lewis	Construction Industry Air Quality Coalition	08-21-2023
032-15-2	Laurel Moorhead	Transfer Flow	08-21-2023
033-15-2	John Kinsey	Wanger, Jones, Helsley	08-21-2023
034-15-2	Evan Edgar	Edgar and Associates	08-21-2023
035-15-2	Terry Fischer	Transportation Charter Services	08-21-2023
036-15-2	Mike Tunnel	American Trucking Association	08-21-2023
037-15-2	Mark Breidenbaugh	Northwest Mosquito and Vector Control	08-21-2023
038-15-2	James Wheeler	Municipal Maintenance Equipment	08-21-2023
039-15-2	Greg Gallup	Royal Coach Tours	08-21-2023

A. CARB Cannot Rely on Materials Listed in Second Notice

Comment: Commenter states “CARB’s Second Notice of Availability, and the language cited above in particular, is an improper attempt to impermissibly backfill CARB’s record of proceeding for the ACF Regulation. CARB may not rely on the material listed in the Second Notice of Availability because it is extra-record material and may not be considered in a proceeding brought pursuant to Code of Civil Procedure section 1085. (See *Western State Petroleum Ass’n v. Superior Court* (1995) 9 Cal.4th 559, 565.) Pursuant to CARB’s California Environmental Quality Act (CEQA) implementing regulations, project approval under CEQA occurred on the date CARB approved ACF for adoption. (See Gov. Code, § 60004.2, subd. (c)(3).) As is reflected in Resolution 23-13, CARB certified the Final Environmental Analysis (EA) and approved ACF for adoption on April 28, 2023. The CEQA record of proceeding for ACF closed more than three months ago. Technical reports cited in the Second Notice of Availability include web content accessed and prepared by CARB in June and August of 2023 and were clearly not relied on by CARB in responding to comments on the EA or in developing ACF. (See, e.g., Second Notice of Availability, citing Canary Media (2023) and CARB’s Comments to the U.S. EPA dated June 16, 2023.) CARB’s attempt to claim that it has “relied” on the materials (see Second Notice of Availability, citing Gov. Code, § 11347.1) is not credible at this late stage in the rulemaking proceeding and is a tacit acknowledgement

that CARB itself believes that ACF is arbitrary. As such, we request that CARB remove these references from the Second Notice of Availability.”

Commenter: [004-15-2]

Comment: The commenter states “By Including Additional Responses to Environmental Comments, CARB is Engaging in *Post Hoc* Environmental Review, in Violation of CEQA. As the Supreme Court explained in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 “[a] fundamental purpose of an Environmental Impact Report (EIR) is to provide decision makers with information they can use in deciding whether to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If post-approval environmental review were allowed, EIR’s would likely become nothing more than post hoc rationalizations to support action already taken.” (*Id.* at 394; see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 79; CEQA Guidelines, § 15004, subd. (a) [“Before granting any approval of a project subject to CEQA, every lead agency . . . shall consider a final EIR . . .”] [emphasis added].) Moreover, the timing requirement set forth in Section 15004 of the CEQA Guidelines “applies to the environmental review documents prepared by [C]ARB . . . in lieu of an EIR.” (*POET, LLC v. Calif. Air Res. Bd.* (2013) 218 Cal.App.4th 681, 716.) The Western States Trucking Association (WSTA) recently filed a writ petition challenging the ACF Regulation, which among other things asserts that CARB violated CEQA by failing to perform a lifecycle analysis of greenhouse gas emissions associated with the ACF Regulation. CARB is now attempting to impermissibly bolster the record—after the approval of the ACF Regulation—by including supplemental responses to comments made by WSTA in its comment letters, which were filed in a timely manner during the rulemaking process. These responses to WSTA’s comments were never presented to CARB’s governing board prior to their approval of the ACF Regulation. As an initial matter, these responses are not properly part of the record for purposes of CEQA because they post-date CARB’s approval of the project. Moreover, while the Second 15-Day Notice asserts the lifecycle analysis was only generally alleged, this issue was a core issue in WSTA’s October 17, 2022, comment letter; its second comment letter dated April 7, 2023; and the oral comments of its counsel to CARB’s governing board on April 27, 2023. It is highly improper for CARB staff to backfill the record only after the governing board approved the project. The new responses are also procedurally improper and violate CEQA’s prohibition of *post hoc* environmental review. Responses to environmental comments are a critical part of the CEQA process. The environmental review process must be complete before CARB approves a regulation. By failing to conclude the environmental review process before the final hearing on the ACF Regulation, CARB has violated CEQA. (See *POET, supra*, 218 Cal.App.4th at 716.)

Commenter: [033-15-2]

Agency Response: No change was made in response to these comments. CARB disagrees with the commenters’ assertions.

CARB’s Response to Comment 270-4, included in the Second Notice of Availability, was carried over, directly and without revisions, from the Response to Comments on the Draft

EA prepared for the ACF Regulation (RTC document). The RTC document was posted on the rulemaking webpage on April 17, 2023. Therefore, the response is already part of the rulemaking record (also referred to as the APA record) for the ACF Regulation, since it was already included in the RTC document. Furthermore, the RTC document was publicly posted and presented to the Board prior to its action on Resolution 23-13 on April 28, 2023. Therefore, Response to Comment 270-4 is properly part of the rulemaking record because it pre-dates (not post-dates) even the Board's April 2023 approval of the regulation and CEQA documents. CARB is therefore not "reopening" the CEQA record as commenters allege because the rulemaking record (which also generally serves as the CEQA record) was not closed in April 2023. (Gov. Code, § 11347.3, subd. (e); Cal. Code Regs., tit. 17, § 60005, subd. (b) [under the Board's CRP, "the rulemaking record . . . will generally also constitute the CEQA administrative record"].) For the above-noted reasons, CARB is unclear why the commenter believes that reproducing previously prepared Response to Comment 270-4 in the 15-day notice package constitutes "post hoc environmental review". The RTC document was posted on the rulemaking webpage on April 17, 2023. Therefore, the response is clearly already part of the CEQA record for the ACF Regulation, since it was already included in the RTC document, which was publicly posted and presented to the Board prior to its action on Resolution 23-13 on April 28, 2023. CARB is therefore not reopening the CEQA record.

The commenters also appear to base their comment on the flawed premise that CARB finalized its adoption of the ACF Regulation prior to August 21, 2023. That premise is incorrect and inconsistent with the rulemaking record. On April 27, 2023, CARB approved Resolution 23-13, which expressly directs CARB's Executive Officer, in pertinent part, to:

[D]etermine if additional sufficiently-related modifications to the regulations are appropriate, and that if no additional modifications are appropriate, the Executive Officer shall take CARB's final step for final approval of such amendments through submittal of the Board-approved rulemaking package to the Office of Administrative Law. The Executive Officer may revise the adopted regulations with grammatical and other non-substantial changes, indicate them as such, and add them to the rulemaking record. If the Executive Officer determines that additional sufficiently-related substantial modifications are appropriate, the modified regulatory language shall be made available for public comment, with any additional supporting documents and information, for at least 15 days, and the Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Board delegates to the Executive Officer the authority to both (1) either approve or disapprove proposed changes in regulatory language under Government Code section 11346.8(c), and (2) conduct any appropriate further environmental review associated with such changes, consistent with the Board's Certified Regulatory Program regulations, at California Code of Regulations, title 17, sections 60000-60008, for those sufficiently-related substantial modifications. Alternatively, rather than taking action on the proposed modifications, the Executive Officer may instead present the modifications, and any appropriate further environmental review

associated with the modifications, to the Board for further consideration, if the Executive Officer determines further Board consideration is warranted.

Resolution 23-13, pp. 35-36 (Emphasis added).

As stated in the August 4, 2023, Second Notice of Public Availability of Modified Text and Availability of Additional Documents for the ACF Regulation, CARB initially submitted the rulemaking package for the ACF Regulation to OAL on June 13, 2023. After being notified of concerns raised by OAL (primarily clarity-related), CARB's Executive Officer then decided to withdraw the rulemaking package from OAL on June 26, 2023, at which point the Executive Officer continued to act with the Board-delegated authority from Resolution 23-13 and determined that additional sufficiently-related modifications to the regulatory text were appropriate. On August 4, 2023, CARB staff, under the direction of the Executive Officer, made available for a public comment period of at least 15 days both the sufficiently-related modifications to the regulatory text and additional supporting documents and information. The public comment period for the Second Notice of Public Availability of Modified Text and Availability of Additional Documents for the ACF Regulation closed on August 21, 2023. CARB's Executive Officer subsequently exercised his Board-delegated authority and took the "final step for approval" of the ACF Regulation on August 28, 2023.

Since CARB's Executive Officer did not take the final step for approval of the ACF Regulation prior to August 21, 2023, the inclusion of CARB's Response to Comment 270-4 from the RTC document into other portions of the rulemaking record for the ACF Regulation is entirely consistent with California Government Code § 11347.1(a).^{1,2}

CARB further notes that Response to Comment 270-4 is already considered part of the rulemaking record, as it was before the Board at the time it voted to approve Resolution 23-13 on April 28, 2023. The commenters provide no basis for their assumption that a response to a CEQA comment is not properly part of the rulemaking record. Nevertheless, in an abundance of caution, CARB reproduced this comment as part of a 15-day package to eliminate any potential argument that it is not part of the rulemaking record, which will also generally serve as the CEQA record. (Cal. Code Regs., tit. 17, § 60005, subd. (b); Gov. Code, § 11347.3.)

¹ Govt. Code § 11347.1(a) provides, in pertinent part, that "[a]n agency that adds any technical, theoretical, or empirical study, report, or similar document to the rulemaking file after publication of the notice of the proposed action and relies on the document in proposing the action shall make the document available as required by this section."

² Commenter's citation to *Western State Petroleum Ass'n v. Superior Court* (1995) 9 Cal 4th 559, 565 is inapposite; that case primarily presented only the issue whether a court can consider evidence outside the administrative record in determining whether an agency's quasi-legislative administrative decision was an abuse of discretion within the meaning of Public Resources Cod section 21168.5. 9 Cal. 4th 559, 565, 568-569. As demonstrated above, the subject document and information is properly included in the administrative record for CARB's ACF rulemaking action.

B. Effective Date Should Be Modified

Comment Summary: Commenter states: "The latest amendments, which are being offered as the final staff proposal, could become effective in a number of days from submission back to the Office of Administrative Law (OAL), given that CARB has requested an immediate Effective Date. The Effective Date of this rule carries with it important and long-lasting implications to those subject to the High Priority Fleets rule. The ability to choose the Model-Year option will be severely limited if the Effective Date is artificially accelerated. Given that several sections/clauses involving the Effective Date are amended in this Package, the California Council for Environmental and Economic Balance (CCEEB) would like to take this opportunity to highlight the issue. CARB's request to OAL for an immediate Effective Date, offering regulated parties no lead time before having to meet new aggressive compliance obligations, did not address the real-world impacts that such a date would have on compliance flexibility. CCEEB believes this omission is unfair to regulated parties, gives the public a false sense of when real-world compliance will actually be achievable, and is inconsistent with the intent of the APA. The Package would force regulated parties to make significant and irreversible decisions for future compliance with almost zero lead-time, little guidance or understanding of the technology to be required, and with numerous issues outside of their control, including the state of the power grid and availability of charging and hydrogen refueling infrastructure to support heavy-duty vehicles. CCEEB opposes an early Effective Date as it limits compliance options from the start, before many stakeholders are even aware of the coming requirements and reduces the likelihood that the goals of the regulation will actually be achieved on the ground as CARB hopes."

Commenter: [028-15-2]

Agency Response: No changes were made in response to this comment. CARB disagrees with the commenter's assertion that the proposed modifications to the regulatory text set forth in this Second 15-Day Notice amend the Effective Date of the ACF Regulation. The proposed modifications to the regulatory text associated with the second 15-day changes primarily clarify how fleets can request and obtain a five-day pass exemption from CARB, and remove previously proposed regulatory text that would have sunsetted provisions of the ACT Regulation at the end of the 2035 model year, and accordingly do not, as the commenter contends, modify the Effective Date of the ACF Regulation. It is therefore clear that the comment is not specifically directed at the proposed modifications to the regulatory text, the procedures followed by CARB in proposing such modifications, or to the additional documents identified in the Second 15-Day Notice that CARB added to the ACF rulemaking record. Consequently, the comment extends beyond the scope of the limited APA comment period opened for the second 15-day changes.

Comment Summary: Commenter supports the proposed change to the "five-day pass" provisions that would deem a request approved if the CARB Executive Officer fails to respond within five days of the request. Stating that, "this transparent process is an

improvement and will reduce the administrative burden of managing this important provision of the rule.”

Commenter: [028-15-2]

Agency Response: No changes were made in response to these comments. Staff appreciates commenter’s support.

C. Exemptions and Extensions – Five-Day Pass Should Be Modified to Exempt Over-the-Road Buses

Comment Summary: Commenter states “CARB is making changes to the five-day pass provision, intended for facilitate non-compliant vehicles to enter California without being considered as part of a California fleet, under Section 2015 for High Priority and Federal Fleets. ABA believes CARB should consider additional changes to this Section 2015.3 “High Priority and Federal Fleets Exemptions and Extensions” to provide a full exemption from the ACF for Over-the-Road Buses (ORTB)” due to concerns about: zero-emissions vehicle (ZEV) technology readiness for ORTBs; ZEV ORTB manufacturer scale; concerns with how the ZEV Purchase Exemption works for ORTB manufacturers; ORTB operational profiles and suitability to transition to ZEVs; and ZEV infrastructure concerns.

Commenter: [027-15-2; 035-15-2, 039-15-2]]

Agency Response: No changes were made in response to these comments. Staff disagree with commenters’ assertion that their comment is sufficiently related to the scope of the notice and 15-day changes to warrant staff consideration in the FSOR.

Notwithstanding that response, it is not appropriate or necessary to exempt motorcoaches or other over-the-road buses from the ACF Regulation for reasons described in responses to similar issues raised in the sections “Zero-Emissions Technology – Motorcoach Weight and Luggage Capacity Issues”, “Costs – Response to Comments from the California Bus Association”, and “Exempt Motor Coach Industry”, of “45-Day Comment Period and First Board Hearing Public Comments with Agency Responses” of the ACF FSOR.

D. CARB Online System

Comment Summary: Commenter asks whether the CARB Online System mentioned in fact sheets is TRUCRS or some other system.

Commenter: [029-15-2]

Agency Response: Changes were made that address this comment. The Drayage Regulation’s definition of the “CARB Online Reporting System” was updated to indicate that reporting would occur in the TRUCRS system. The High Priority and Federal Fleets and State and Local Government Fleets Regulations already indicate that reporting will occur in TRUCRS.

E. Comments Out of Scope Not Directly Addressing the Second 15-Day Changes

1. Clarify School Bus Applicability

Comment Summary: Commenter states that the school bus definition in statute referenced conflicts with the regulation when determining which buses are subject to ACF.

Commenter: [001-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

2. Do Not Impose Zero-Emissions Vehicle Mandates

Comment Summary: Commenter states that ZEVs will occur naturally with time and market forces, and that the regulation is not necessary.

Commenter: [002-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

3. Regulation Applicability Clarification

Comment Summary: Commenter asks questions to clarify the High Priority and Federal Fleets Regulation applicability for their fleet or constituents.

Commenter: [003-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

4. Outreach and Training

Comment Summary: Commenter asks questions about participation in or has suggestions for the format and process of ACF implementation Truck Regulation Advisory Committees.

Commenter: [003-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter suggests CARB provide training materials that commenter will host on a learning management system to inform and train their constituents.

Commenter: [003-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks for a CARB meeting or training on ACF.

Commenter: [010-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks when fact sheets and reporting guidance will be available.

Commenter: [013-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

5. Zero-Emissions Vehicle Technology Concerns

Comment Summary: Commenter expresses concerns about lack of available ZEV options that are feasible for their business due to: limited range and time needed to charge; lack of data on available ZEVs which ties to problems with ZEVs; inability for ZEV manufacturers to supply their customers; reliability of ZEVs; lack of market acceptance; concerns with ZEV manufacturers that issue recalls on their ZEVs or make fraudulent claims. Commenter asks for the regulation to be delayed until issues are resolved and asks how businesses will comply if ZEV issues are not resolved.

Commenter: [005-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter expresses concerns about ZEV production and fueling upstream emissions and impacts from recycling and disposal of batteries. Commenter states concern about fires from lack of research and development from rushed development of ZEVs. Commenter asks for a list of vehicles that are proven to achieve over 450 miles on a charge and that have been proven to not have issues. Commenter states no vehicles that meet these requirements are on the market.

Commenter: [024-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter expresses concerns about production and infrastructure delays, and grid capacity related to ZEVs.

Commenter: [026-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter states concerns about refueling infrastructure for ZEVs.

Commenter: [027-15-2, 035-15-2, 039-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter states concern about ZEV and ZEV infrastructure costs and states need for funding assistance.

Commenter: [027-15-2, 035-15-2, 039-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter states concern about ability of ZEVs to meet their needed off-road duty cycles, would present a hazard to safety when operating in wetlands or semi-wild areas, and would have their mission to protect public health threatened.

Commenter: [037-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

6. Regulation Implementation Clarification

Comment Summary: Commenter asks for clarification on how to determine minimum useful life, clarification on what combustion vehicles may be added to the fleet, whether they need to report, and clarification on how to categorize vehicles into the ZEV Milestones Groups.

Commenter: [006-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks whether leased vehicle and vehicles outside California are included when determining fleet size for ZEV Milestones Option.

Commenter: [007-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks for clarification on how to determine minimum useful life and for guidance on how to report for the ACF Regulation.

Commenter: [009-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks for clarification on how to categorize vehicles into the ZEV Milestones Groups.

Commenter: [010-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks how to report compliance and provided a snapshot of their fleet to determine which portion of ACF they were subject to.

Commenter: [011-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks for clarification on whether separate corporate subsidiary fleets that exhibit common ownership over vehicles would be able to comply with different compliance options, or if they must use the same option. Commenter also asks whether ZEVs under 8,500 lbs. gross vehicle weight rating would count towards compliance if no ZEV over 8,500 lbs. was available.

Commenter: [012-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks for clarification on whether combustion vehicles purchased in 2023 can be added to the fleet for a fleet owner that selects the ZEV Milestones Option.

Commenter: [013-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks for general information about phasing out old vehicles, what vehicles can continue to operate, and regulation deadlines, without specifying the regulation.

Commenter: [014-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks whether companies that do not work in the port or rail systems would be subject to the requirements of ACF.

Commenter: [015-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks whether vehicles under 8,500 lbs. are counted when determining whether a fleet is subject to ACF.

Commenter: [016-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks whether the useful life retirement requirement applies to fleets subject to the State and Local Government Fleet Regulation, and whether such fleets would be eligible to use the ZEV Milestones Option.

Commenter: [017-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks whether medium-duty ZEVs would count toward the ZEV Milestones Option requirements if they currently mostly have sleeper cab tractors.

Commenter: [018-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter suggests changes to the definition of “minimum useful life” to eliminate superfluous language and clarify that the useful life timeframe starts from the engine year as determined by the first digit of the emissions family number, rather than the current definition.

Commenter: [022-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks about Drayage Regulation compliance requirements to visit ports once a year.

Commenter: [029-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks about whether CARB can offer a reporting extension due to issues they have with the January registration deadline.

Commenter: [030-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter suggests the minimum useful life definition be modified to eliminate uncertainty about the model year that minimum useful life is calculated on and suggests basing it on the first digit of the emissions family number. Commenter provides an analysis showing the uncertainty caused by the current language and promoting their suggested solution. Commenter states that CARB staff confirmed their understanding.

Commenter: [031-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Notwithstanding that response, staff want to correct the commenter’s mischaracterization of what staff had said in response to their email inquiry. Staff confirmed with the commenter that “We would use the engine year displayed on the emissions control label on the engine block to determine the engine model year from which to calculate the remaining useful life for the ACF Regulation. We believe there is some correspondence to engine model year based on the emissions family number, but we are not sure whether this holds true in every case. We would always look for a properly affixed and fully legible emissions control label to make this determination should an audit ever take place.”

Comment Summary: Commenter asks for assistance with their specific fleet makeup in determining their ZEV Milestones Option compliance plan.

Commenter: [036-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter states that State and local government fleets should have a four-to-one combustion-to-ZEV purchase ratio instead of one-to-one.

Commenter: [037-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

7. Vehicle Definition

Comment Summary: Commenter states the vehicle definition should be reverted to its version before the first 15-day changes to the ACF Regulation and states a number of reasons why this could be interpreted to bring in fleets with any type of vehicle including those not regulated by ACF.

Commenter: [031-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Notwithstanding that response, Section 2015(a)(1) states "this regulation applies to any entity that owns, operates, or directs the operation of one or more vehicles specified in section 2015(a)(2) in California on or after January 1, 2024, and that also meets any of the following criteria...", which modifies the use of "vehicle" for each subpart of 2015(a)(1)(A) through (D). Necessarily, each use of "vehicle" within the regulation is modified by the "vehicle scope" and definition of "vehicle". When determining applicability, fleet owners should only count vehicles within the "vehicle scope" of the regulation.

8. Funding

Comment Summary: Commenter asks for where to get more information about ZEV funding opportunities besides the FARMER or Carl Moyer programs.

Commenter: [008-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks for information about infrastructure incentives for ZEVs.

Commenter: [010-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

9. Process

Comment Summary: Commenter asks about the process of regulatory approval with OAL, and whether the regulation can be overturned or amended.

Commenter: [010-15-2, 023-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter asks where to get more information about the Clean Truck Partnership agreement's commitment for CARB to hold a public workshop about the role of hydrogen fueled internal combustion engines.

Commenter: [023-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

10. Clean Truck Partnership

Comment Summary: Commenter asks whether the ACF Class 8 requirements would be extended to a later date due to CARB agreeing to the Diesel Engine Manufacturer suggestion to tighten emission standards on new diesel engines, asks where to find information about it on the website, and asks whether this would require an amendment to ACF.

Commenter: [019-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter states CARB should incorporate the previously released Enforcement Discretion letter or remove the provisions which necessitate this discretion and asks that the application and extent of this letter be clarified.

Commenter: [036-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

11. Idling Limits

Comment Summary: Commenter asks whether there are any idling restrictions on high priority fleets that opt for the Model Year Schedule.

Commenter: [020-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

12. Postpone Initial Compliance and Reporting Deadlines

Comment Summary: Commenter states the withdrawal of the ACF package from OAL creates uncertainty, compounded by pending litigation and the Clean Truck Partnership, and impacting ability to plan for near- and long-term fleet planning, and ask that the reporting and compliance deadlines are pushed back by at least one year.

Commenter: [021-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

13. Expand Configurations List for Zero-Emissions Vehicle Purchase Exemption

Comment Summary: Commenter states that "rear loading box trucks utilized for paper collection, shredding trucks," should be added to the ZEV Purchase Exemption list of configurations because they are common body types in the document shredding business and would simplify exemption requests by the commenter by adding these to the configuration list.

Commenter: [021-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

14. Allow Purchases to Count as Zero-Emissions Vehicle Additions

Comment Summary: Commenter requests that CARB reconsider authorizing credit for advance purchases of zero-emissions trucks that have not been delivered to count towards compliance with ACF.

Commenter: [021-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

15. Include Lease Buyouts in Regulation Language

Comment Summary: Commenter states clarifying language should be added to the rule language itself confirming that purchasing a leased vehicle that is already operating in a California fleet at the end of a lease period (a lease buyout) would not be considered a "vehicle purchase" under the proposed rule, section 2015(b). Otherwise, the definition of "vehicle purchase" is unclear on its face as to lease buyouts. The leasing company typically holds the equitable and legal title, but both the lessor and lessee appear on the state motor vehicle registration. After commenter purchases a leased vehicle, the legal and equitable title passes to the company. However, in the proposed definition, a "vehicle purchase" is one of three articulated events. Without clarifying that a lease buyout is not considered a "vehicle purchase," which, based on CARB's response to comments, it is not, the plain language of the rule could be misleading and confusing for those fleet owners who typically buy leased vehicles at the end of the lease terms.

Commenter: [021-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

16. CARB Response Time to Extension Requests

Comment Summary: Commenter requests that there be a time period for CARB to approve or deny extension requests, or else such request will be deemed granted. For example, given the 45-day time period for an entity to submit a request under the ZEV Infrastructure Delay Exemption (section 2015.3(c)), the proposed rule should provide some assurance that CARB will timely act on that extension request, and should also provide that in the event of requests for further information by CARB to inform the decision, there is adequate time for the entity to respond. Absent a clear pathway for entities who submit completed applications for extensions, applicants will be forced to file writs of mandate in superior court forcing CARB to act. Clarification in the regulation would avoid a potentially burdensome and unnecessary pathway for all parties.

Commenter: [021-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

17. Submission of Previously Submitted Comment Letters

Comment Summary: Commenter submitted a letter that it previously submitted during an open comment period of the ACF Regulation rulemaking and does not raise additional

comments that are directly related to the currently proposed Second ACF 15-day changes and are beyond the scope of the notice.

Commenter: [021-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice. The content of the letter is addressed in the ACF FSOR as responses to comment letter 122-15d in the section "15-Day Comment Period Public Comments with Agency Responses".

18. Drayage Regulation Conflicts with Useful Life

Comment Summary: Commenter states they were previously told by CARB staff that requiring a vehicle to stop performing drayage service is not equivalent to requiring retirement, replacement, retrofit, or repowering of a vehicle, as that vehicle can then be used statewide in other applications, which appears to implicate all trucks performing drayage in the state must be zero-emission by January 1, 2035, despite a 2023 engine only being 12 years old at the time. Commenter asks if this means that since the regulation is under review with OAL that the onset of 100 percent zero-emissions drayage vehicles will be pushed back to accommodate the minimum useful life definition in the drayage section of the regulation.

Commenter: [024-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

19. Zero-Emission Airport Shuttle Bus Regulation Interaction with Advanced Clean Fleets

Comment Summary: Commenter asks which regulation supersedes the other for fleet owners subject to both regulations after January 1, 2027.

Commenter: [025-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

20. Delay Regulation

Comment Summary: Commenter asks that the regulation be delayed.

Commenter: [026-15-2, 027-15-2, 035-15-2, 039-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

21. Economic Impacts

Comment Summary: Commenter states the regulation may cause job losses.

Commenter: [026-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

Comment Summary: Commenter states the regulation's \$50 million threshold for high priority fleets should be indexed to inflation to prevent small businesses from being drawn into the regulation over time due to inflationary economic forces.

Commenter: [031-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

22. CARB Must Conduct Another Hearing

Comment Summary: Comment states "In addition, the addition of responses to environmental comments cannot occur under CARB's certified regulatory program without conducting another hearing. Although CARB previously conducted a hearing and purportedly delegated the Executive Officer authority to respond to environmental comments, CARB's certified regulatory program makes plain that in such circumstances, there must be a subsequent hearing before the state board:

(6) Hearings. . . . If a state board hearing is held, the state board may vote on a resolution that directs staff to make direct changes or prepare written responses to environmental comments, and in such case shall direct staff to schedule a subsequent hearing for the state board's consideration of the final proposal for approval."

(13 Cal. Code Regs., § 60004.2(b)(6) [emphasis added].) Because it appears CARB does not intend to schedule another state board hearing on the ACF Regulation, CARB has violated both CEQA and its CEQA regulations.

In short, CARB's attempt to bolster the CEQA record after the approval of the ACF Regulation violates the letter, the intent, and the spirit of CEQA, as well as CARB's own certified regulatory program."

Commenter: [033-15-2]

Agency Response: No change was made in response to this comment, which alleges a CEQA violation. The comment is beyond the scope of either the modifications or the additional supporting documents and information identified in the Second ACF 15-day Notice. Furthermore, the 15-day comment period was for APA purposes and was not a CEQA comment period.

Nevertheless, CARB wishes to address this comment for clarity. The commenter ignores more specific, and directly applicable, language in CARB's Certified Regulatory Program (CRP) (California Code of Regulations, title 17, § 60000 et seq.). In particular, as pertains to the current scenario (i.e., where CARB has prepared an EA), CARB's CRP provides:

As specified in section 60004(e), for projects subject to the rulemaking proceedings under the California Administrative Procedure Act (Government Code, section 11340 et seq.), the state board may, after it approves of the project, delegate to the Executive Officer the authority to both (1) either approve or disapprove proposed changes in regulatory language under Government Code section 11346.8(c), and (2) conduct any appropriate further environmental review associated with such changes, consistent with section 60004. (California Code of Regulations, title 17, § 60004.2(e).)

There is no requirement for CARB to schedule a Board hearing any time a response to an environmental comment is prepared. And, as explained above, there is no new response to environmental comment being prepared here. CARB is not seeking to add a new response to an environmental comment; CARB is merely adding Response to Comment 270-4 (which was already included in the previously published RTC document) to the rulemaking record for the ACF Regulation and repeating information that the public already had an opportunity to review. Moreover, as explained in Attachment 1 of Executive Order R-23-003, no new environmental analysis is necessary because none of the changes described in the Second 15-Day Notice alters the analysis or conclusions previously stated in the Final EA. Refer also to response to "CARB Cannot Rely on Materials Listed in Second Notice" in the section "Second 15-Day Comment Period Public Summary of Comments and Agency Response".

23. CARB Should Revisit Emissions Benefits of Regulation

Comment: Commenter states "We further request that CARB reconsider its conclusions relating to the emissions benefits of the ACF Regulation. It is imperative that CARB revisit the life cycle (also known as well-to-wheel) approach to fairly and accurately assess the emission impacts of vehicles with internal combustion engines fueled with renewable natural gas (RNG) as compared to ZEVs. It is well established that on a life cycle basis, RNG is the only carbon negative fuel and is the cleanest commercial fuel available today. Thus, it is incumbent on CARB to amend ACF to require the utilization of the next cleanest technology—vehicles running on RNG—in situations where ZEVs are unavailable or unwarranted."

Commenter: [004-15-2]

Agency Response: No change was made in response to this comment. The commenter's request that CARB "reconsider its conclusions relating to the emissions benefits of the ACF Regulation" is beyond the scope of both the modifications identified in this notice or the supporting documents and information identified in this notice. The proposed modifications to the regulatory text primarily clarify how fleets can request and obtain a five-day pass and remove proposed text that sunsetted provisions of the ACT Regulation at the end of the 2035 model year. The supporting documents and information primarily consist of

information refuting a comment that CARB misrepresented the emissions benefits of the ACF Regulation by not conducting a full life-cycle analysis of the greenhouse gas emissions attributable to that regulation. CARB's response to that comment included, in pertinent part, a quantitative assessment of the greenhouse gas emissions of the Proposed Project compared to the legal baseline. However, neither that document or supporting information extended to CARB's overall conclusions "relating to the emissions benefits of the ACF Regulation." It is therefore clear that this comment is beyond the scope of either the modifications or the additional supporting documents and information identified in this second 15-Day notice, and consequently no response is required. Notwithstanding this response, CARB disagrees with the commenter's assertion that internal combustion engines fueled with RNG have lower emissions impacts than ZEVs. See FSOR, pp. 93-94, 95-103, 348-349, and FSOR Appendix A, pp. 3-4.

24. Removal of the Final Statement of Reasons from Webpage During the Public Comment Period on the Second 15-Day Notice is Grounds to Extend Comment Period

Comment: Commenter states, "WSTA notes that CARB has removed the FSOR (as well as the responses to comments on the EA) from the CARB website without explanation. This not only frustrates the ability of the public to provide full comment, but is an additional fact demonstrating the environmental review process has not been completed—notwithstanding the governing board's "approval" of the ACF Regulation at its April 27, 2023, meeting. This is also contrary to CARB's obligation to maintain a complete rulemaking file accessible to the public at all times. Even if CARB's governing board does not rehear the ACF Regulation for approval, the removal of the FSOR from the CARB website is grounds to extend the comment period on the 15-day notice."

Commenter: [033-15-2]

Agency Response: No change was made in response to this comment.

CARB disagrees with the assertion that its environmental review of the ACF Regulation is not yet complete. As explained in Attachment 1 of Executive Order R-23-003, no new environmental analysis is necessary because none of the changes described in the Second 15-Day Notice alters the analysis or conclusions previously stated in the Final EA. Refer also to response to "CARB Cannot Rely on Materials Listed in Second Notice" in the section "Second 15-Day Comment Period Public Summary of Comments and Agency Response", and response to "CARB Must Conduct Another Hearing" in the section "Comments Out of Scope Not Directly Addressing the Second 15-Day Changes".

CARB staff removed the link to the FSOR on its rulemaking webpage page from July 26, 2023 to August 31, 2023, because, as previously stated, CARB withdrew the ACF rulemaking record from OAL on July 26, 2023. However, CARB did not remove the link to its RTC document from its rulemaking webpage. The RTC document was posted to CARB's rulemaking webpage on April 17, 2023 and has remained available to the public since that

time. The commenter does not explain why they (incorrectly) claim CARB has removed the RTC document from its webpage.

Moreover, CARB maintained custody of the FSOR, in addition to the entire ACF rulemaking package during the time period beginning July 26, 2023 to August 30, 2023, in compliance with Govt. Code § 11347.3(a).³ These documents were available for public inspection upon request, so the assertion that the ACF rulemaking package was not accessible to the public is incorrect.

Finally, the commenter cites to no statutory authority or case law supporting its claim that CARB is obligated to extend the comment period on the Second Notice of Public Availability of Modified Text and Availability of Additional Documents for the ACF Regulation merely because CARB removed the link to the FSOR for the ACF Regulation from its rulemaking webpage.

25. CARB Should Refile a Notice of Proposed Action with the Office of Administrative Law to Provide itself the Time Needed to Conduct Another Hearing on the Advanced Clean Fleets Regulation

Comment: The commenter states, “Although CARB is attempting to re-open the record to provide a response to WSTA’s lifecycle emissions concerns—an environmental issue CARB completely ignored during the rulemaking process—it is declining to conduct another hearing before the governing board as required under 13 Cal. Code Regs., § 60004.2(b)(6). CARB is likely taking this position because its deadline to file the ACF Regulation with OAL is September 1, 2023. Specifically, WSTA understands that CARB requested withdrawal of the ACF Regulation from OAL on July 26, 2023. (See Exhibit “A.”) Unlike advance decisions from OAL, a voluntary withdrawal of a regulation does not afford an applicant an additional 120-days to refile with OAL. This is because an extra 120-days can only be provided when CARB receives a written opinion from OAL about the problems it sees with the regulation. (Govt. Code, §§ 11349.4, subd. (a).) Because that did not occur, CARB is required to file with OAL on or before September 1, 2023. (Cf. OAL Regulatory Notice Register, Notice File No. Z2022-0816-04.) Because this does not afford CARB sufficient time to conduct the public hearing required under Section 60004.2(b)(6) due to its response to WSTA’s comments on lifecycle emissions, CARB must instead issue a new Notice of Proposed Action.”

Commenter: [033-15-2]

Agency Response: No change was made in response to this comment. CARB disagrees with the commenter’s assertion that it is reopening the CEQA record to newly provide a response to comments raising lifecycle emissions issues. Refer to response to “CARB Cannot

³ Every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. Commencing no later than the date that the notice of the proposed action is published in the California Regulatory Notice Register, and during all subsequent periods of time that the file is in the agency’s possession, the agency shall make the file available to the public for inspection and copying during regular business hours.

Rely on Materials Listed in Second Notice” in the section “Second 15-Day Comment Period Public Summary of Comments and Agency Response”, and response to “CARB Must Conduct Another Hearing” in the section “Comments Out of Scope Not Directly Addressing the Second 15-Day Changes” in regards to requirements for conducting a public hearing.

26. If CARB Reopens the Record to Accept Supplemental Information from Staff, it Should Likewise Accept Environmental Comments from the Public

Comment: The commenter states, “CARB may not, on the one hand, reopen the record-after project approval-to respond to environmental comments it neglected to address during the public comment period, while at the same time asserting this “does not mean that CARB is opening a new CEQA comment period for this rulemaking action.” (See 15-Day Notice at 23.) WSTA believes CARB's new responses to comments are inappropriate; however, to the extent CARB contends it has the opportunity to augment the record after project approval, the public should likewise be afforded the opportunity to add substantive environmental comments and evidence to the record. .” [The comment letter also includes Exhibits A through C with further claimed information regarding electric vehicle safety and charging considerations.]

Commenter: [033-15-2]

Agency Response: No change was made in response to this comment. To the extent that this comment is based on the premise that CARB is reopening the CEQA record, that premise is incorrect, and no further response is required. This comment is also based on the flawed premise that CARB’s Response to Comment 270-4 from the RTC document is being added to the CEQA record for the first time; indeed, it is already in the CEQA record and therefore rulemaking record, and has been since April 17, 2023, as discussed above. Refer to response to “CARB Cannot Rely on Materials Listed in Second Notice”, response to “CARB Must Conduct Another Hearing”, and response to “CARB Should Refile a Notice of Proposed Action with the Office of Administrative Law to Provide itself the Time Needed to Conduct Another Hearing on the Advanced Clean Fleets Regulation”.

To the extent this comment asserts CARB is required to add into the ACF Regulation’s rulemaking record documents purporting to establish that CARB’s EA for the ACF Regulation is incomplete, and that batteries in electric vehicles pose safety concerns, CARB disagrees.

Govt. Code § 11347.1(d) requires an agency to summarize and respond to written *comments* “on the document or information” that the agency added to the rulemaking file pursuant to Govt. Code § 11347.1. CARB’s Response to Comment 270-4 from the RTC document consists of information refuting a comment that CARB misrepresented the emissions benefits of the ACF Regulation by failing to conduct a full life-cycle analysis of the greenhouse gas emissions attributable to that regulation. CARB’s response to this comment included, in pertinent part, a quantitative assessment of the greenhouse gas emissions of the ACF Regulation compared to the legal baseline. Neither of the two documents that the commenter seeks to introduce into the ACF Regulation’s rulemaking record constitute written comments relating to CARB’s inclusion in the rulemaking record of previously

prepared Response to Comment 270-4 from the RTC document, and consequently CARB is not required to respond to those documents.⁴ As described above, Response to Comment 270-4 is properly part of the CEQA record and therefore rulemaking record for the ACF Regulation. The commenter had ample opportunity to submit environmental comments during the lengthy public CEQA process undertaken for the Proposed ACF Regulation. As stated in the Second 15-Day Notice, no CEQA comment period accompanied the Second 15-Day Notice, and therefore the comment and the attached exhibits are beyond the scope of this second 15-day change.

Furthermore, pursuant to CEQA, in order to exhaust CEQA claims for future litigation, such claims must be “presented to [CARB] orally or in writing...during the public comment period provided by [CEQA] or before the close of the public hearing on the project before the issuance of the notice of determination.” (Cal. Pub. Resources Code § 21177(a).) CARB’s CEQA comment period ended on October 17, 2022. CARB’s final public hearing took place on April 28, 2023. Therefore, claims that were not submitted before that date may not be raised in litigation.

27. CARB’s Lifecycle Emissions Analysis

Comment Summary: Commenter raises issues with CARB’s lifecycle analysis provided in the ACF EA’s Response to Comments. Commenter also claims to have submitted a comment related to this topic on 3/24.

Commenter: [034-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

The commenter references a comment they claim they submitted to CARB on March 24, but they did not submit it into any relevant docket for the ACF Regulation. They also do not identify which CARB docket it was submitted to, whether it was a rulemaking or planning docket, or how it relates to the ACF Regulation.

⁴ To the extent that such documents constitute written comments submitted to CARB during the second 15-day public notice, they are part of the ACF rulemaking record pursuant to Govt. Code § 11347.3(b)(6). However, it is important to note those documents cannot be characterized as data or other factual information, technical, theoretical, or empirical studies or reports that CARB relied upon in adopting the ACF Regulation (Govt. Code § 11347.3(b)(7)). Govt. Code § 11347.1 requires an agency seeking to add “any technical, theoretical, or empirical study, report, or similar document to the rulemaking file after publication of the notice of proposed action” on which that agency relies upon in proposing that action to follow the procedures specified in Govt. Code § 11347.1. CARB expressly disclaims that it relied on either of the documents attached to commenter’s submission in adopting the ACF Regulation. Moreover, CARB has not followed the procedures specified in Govt. Code § 11347.1.

To the extent the commenter intends to comment on the environmental analysis, the comment is made outside any CEQA comment period, and is therefore not a valid CEQA comment, nor part of the CEQA record.

Furthermore, the comment is also beyond the scope of the limited APA comment period opened for the second 15-day changes. The comment broadly urges CARB to: "support a California Battery Directive following the EU adopted regulations when considering any new regulations deploying ZEV technology including the ACF Rule and providing [lifecycle analyses] for ZEVs"; states that CARB has a statutory duty to minimize emissions leakage "when considering the AB 32 Climate Change Scoping Plan Update and needs to address the carbon intensity of ZEV linear supply chain battery manufacturing where the ACF Rule will significantly increase leakage", and states that "CARB should require a ZEV Battery Manufacturing full lifecycle analysis which was also supported by EJAC recommendation NF5 and should have supported AB1012." None of the above-mentioned comments are specifically directed at the proposed modifications to the regulatory text associated with the second 15-day changes, (which primarily clarify how fleets can request and obtain a five-day pass exemption from CARB and remove previously proposed regulatory text that would have sunsetted provisions of the ACT Regulation at the end of the 2035 model year), or to the procedures followed by CARB in proposing such modifications. In addition, the comments do not specifically address the additional documents identified in the Second 15-Day Notice that CARB added to the ACF rulemaking record. It is accordingly clear that the comment extends beyond the scope of the limited APA comment period opened for the second 15-day changes.

Comment Summary: Commenter raises issues with CARB's lifecycle analysis provided in the ACF EA's Response to Comments.

Commenter: [032-15-2]

To the extent the commenter intends to comment on the environmental analysis, the comment is made outside any CEQA comment period, and is therefore not a valid CEQA comment, nor part of the CEQA record.

Furthermore, the comment is also beyond the scope of the limited APA comment period opened for the second 15-day changes. The comment asserts that "CARB's reasoning for refusing to conduct a full lifecycle, or well-to-wheel analysis, of electric vehicles and greenhouse gas emissions relies on flawed logic," then refers to asserted deficiencies in CARB's statements on *pages 18 and 22* of CARB's Response to Comments on the Draft Environmental Analysis Prepared for the Advanced Clean Fleets Regulation before concluding that "[i]t is imperative that CARB fairly and accurately revisits the lifecycle emissions analysis assessment of the emissions impacts of alternatively-fueled vehicles as compared to battery electric vehicles." The comment is not specifically directed at the proposed modifications to the regulatory text associated with the second 15-day changes, (which primarily clarify how fleets can request and obtain a five-day pass exemption from CARB and remove previously proposed regulatory text that would have sunsetted

provisions of the ACT Regulation at the end of the 2035 model year), or to the procedures followed by CARB in proposing such modifications.

The comment also does not specifically address the additional documents identified in the Second 15-Day Notice that CARB added to the ACF rulemaking record. CARB did add its Response to Comment 270-4 on the Draft EA prepared for the ACF Regulation to FSOR and other portions of the ACF rulemaking record, but that portion is limited to pages 66 and 67 of the Response to Comments document, which is limited to CARB staff's quantitative assessment of the greenhouse gas emissions associated with upstream emissions attributable to the ACF Regulation. In contrast, the comment criticizes CARB staff statements summarizing findings from studies performed by Ford and other academic researchers, and the Department of Energy regarding lifecycle emissions (defined as emissions associated with vehicle manufacturing and disposal as well as upstream emissions) for both conventional fossil fueled vehicles and battery electric vehicles (Response to Comments p. 18) and CARB statements responding to a commenter's suggestion that only compressed natural gas engines should be allowed to generate emissions credits under CARB's Omnibus regulation (p. 22). Because the comments clearly do not pertain to CARB staff's quantitative assessment of the greenhouse gas emissions associated with upstream emissions attributable to the ACF Regulation, they clearly extend beyond the scope of the limited APA comment period opened for the second 15-day changes.

28. Battery Recycling and Supply Chain

Comment Summary: Commenter raises issues about battery recycling and supply chain concerns.

Commenter: [034-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

29. Regulation is Not Achievable in Real-World Practice

Comment Summary: Commenter states "We remain concerned that the final set of rules does not allow for clear and straightforward compliance pathways without requiring future discretionary implementation decisions, standards and precedent activities from CARB. These concerns are coupled with broad vehicle and infrastructure uncertainties. Together, these are significant unknowns today when fleet operators are required to make multi-million-dollar, decade-committing decisions. CCEEB believes that, while the package is an improvement in readability, as a whole, it does not achieve the critical goal set at the first board hearing on October 27, 2022: i.e., that the rule be actually achievable in real-world practice for the hundreds of thousands of medium- and heavy-duty trucks on the road in California today that would be subject to the ACF provisions, especially in the near-term. CCEEB refers you to our last comment letter, which highlights the remaining issues that prevent the final package from supporting the dual mandates of actually achieving California's environmental goals in practice, while protecting its economic policy

objectives and the jobs of millions of California citizens who rely on a robust goods movement industry.”

Commenter: [028-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.

30. Zero-Emissions Vehicle and Compliant Combustion Engine Shortages

Comment Summary: Commenter raises issues with availability of compliant ZEVs and combustion engines that meet ACF requirements and asks the rule to be delayed and to have a workgroup on these topics.

Commenter: [038-15-2]

Agency Response: No changes were made in response to these comments. The comments are not directly related to the Second ACF 15-day changes and are therefore beyond the scope of the notice.